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IN THE MADHYAPRADESH STATE ADMINISTRATIVE TRIBUNAL:
PRINCIPAL BENCH: JABALPUR.

O.A. No. (2201) of 1995

W. P. No. 1151/05

BETWEEN

BIPIN BIHARI TRIVEDI, son of late Rajnarayan Trivedi,
aged about 53 years, by occupation service, resident
73, Samta Colony, Chirhuldih, Ward, RAIPUR MP.

AND

... APPLICANT

1. The State of Madhya Pradesh, through the
Secretary to Government in Home Department, BHOPAL.
2. Director General of Police, Police Head quarters,
Bhopal.
3. Inspector General of Police (Administration),
Police Head Quarters, Bhopal. ... RESPONDENTS.

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNALS ACT: 1985.

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1151 of 2005

Bipin Bihari Trivedi

Versus

The State of Madhya Pradesh (now Chhattisgarh) And Others

Post for pronouncement of orders on the 24th day of July, 2017

Sd//-
Prashant Kumar Mishra
Judge



12/03/08/17

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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 16-05-2017

Judgment delivered on 24-07-2017

WPS No. 1151 of 2005

- Bipin Bihari Trivedi

---- Petitioner

Versus

- The State of Madhya Pradesh (now Chhattisgarh) And Others

---- Respondent

For Petitioner
For Respondent/State

Ms. Smiti Sharma, Advocate
Shri Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

1. The present writ petition was preferred in the year 1995 as Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking quashment of the order dated 10-7-1995 (Annexure – A/1) whereby the petitioner has been compulsorily retired under Rule 42 (1) (b) of the Chhattisgarh Civil Services (Pension) Rules, 1976 (for short 'the Rules, 1976').



2. At the relevant time, the petitioner was posted as Area Officer, Crime Investigating Department (CID), Raipur. It is averred in the petition that the petitioner was appointed as Sub-Inspector Police on 1-1-1964 and was confirmed on the said post on 7-1-1968. He was promoted to the post of Inspector on 27-7-1981. His entire career was excellent and unblemished and had received 84 awards including cash awards and commendation certificates, which were duly entered in his service book. The petitioner was never visited with any punishment till the impugned order was passed, therefore, the petitioner was shocked to receive the impugned order compulsorily retiring him from service in public interest with immediate effect.
3. Assailing the impugned order, Ms. Smiti Sharma, learned counsel appearing for the petitioner, would submit that in absence of any adverse entry in the petitioner's confidential role through out the career there was no material before the scrutiny committee for exercising the power under Rule 42, therefore, the impugned order is arbitrary and without application of mind. Learned counsel would put forth that considering the petitioner's performance during his service career he was not a dead-wood and, as such, there was no

occasion to exercise the power under Rule 42 of the Rules, 1976 against the petitioner. Learned counsel would argue that two other employees namely; A.R Khan & B.L Narvale were also short listed for compulsory retirement under Rule 42, but they were never compulsorily retired and instead they were promoted on 9-5-1995 (Annexure-A/16). This act of the respondent shows arbitrariness in taking action against the similarly placed employees.

4. Ms. Smiti Sharma, learned counsel would argue that the scrutiny committee scrutinized the cases of 499 employees in one day, which is not humanly possible and this shows mechanical exercise of power by the authorities. Learned counsel would place reliance upon the decisions rendered in **Madhya Pradesh State Cooperative Dairy Federation Limited and another v. Rajnesh Kumar Jamindar and others¹**, **State of M.P. and another v. Noor Jama Khan and another²** and **P. Sivanandi v. Rajeev Kumar and others³**.
5. Shri Shashank Thakur learned Government Advocate appearing for the State, *per contra*, would argue that compulsory retirement under Rule 42 of the Rules, 1976 is

1 (2009) 15 SCC 221

2 2002 (3) MPLJ 147

3 (2017) 4 SCC 579



never considered as a punishment, therefore, if the power has been exercised in public interest based on the petitioner's service record it can never be termed as arbitrary or unreasonable. Shri Thakur would further argue that the petitioner's case was scrutinized by the scrutiny committee on the basis of circulars dated 5-1-1994 & 17-11-1985, along with cases of other employees who have completed 25 years of service or attained the age of 55 years and, as such, the action is *bona fide* and in public interest.

6. The proceedings of the scrutiny committee has been placed before this Court as Annexure-A/7. According to the proceedings, cases of 395 Police Officers of Inspector cadre and 104 employees of Ministerial cadre, total 499 cases were scrutinized on 2 days i.e. 4th & 5th August 1994. The Annual Confidential Reports (for short 'the ACRs') of last five years of 18 Inspectors have been mentioned in the proceedings, however, there is no mention about the service record of the previous years.
7. Law in respect of the nature and character of the order of compulsory retirement has been settled by the Supreme Court in catena of decisions. In an earlier decision, in the matter of



Baikuntha Nath Das v. Chief District Medical Officer, Baripada⁴, the Supreme Court laid down the following principles at para 34 :

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more

so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. The circumstance by itself cannot be a basis for interference.

8. Similarly, in **State of Gujarat v. Umedbhai M. Patel**⁵ the Supreme Court, after running through previous decisions has carved out the principles governing compulsory retirement in paragraph 11, which are as follows :

11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarised thus:

(i) Whenever the service of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead-wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note



of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.

9. In **Noor Jama Khan** (supra) the Division Bench of the Madhya Pradesh High Court has held that even if the satisfaction of the scrutiny committee/review committee sails on the principle of subjective satisfaction it does not necessarily mean that there can be no material and the competent authority can take a flight in fancy. It must meet the requirement of appreciation expected of a prudent man and the appreciation should be relevant and germane to the purpose apropos to its context. It must indicate the satisfaction of a prudent and fair man and there should be no perversity of approach. When we say perversity of approach it means perverse legal approach. The Division Bench, thereafter, quoted the decision of the Supreme Court rendered



in **Posts and Telegraphs Board and Others v. C.S.N.**

Murthy⁶ wherein Their Lordships observed thus:

5.....An order of compulsory retirement is not an order of punishment. Fundamental Rule 56(j) authorises the Government to review the working of its employees at the end of their period of service referred to therein and to require the servant to retire from service if, in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record.....

10. The Division Bench of the Madhya Pradesh High Court in **Noor**

Jama Khan (supra), observed thus in para 10 :

10. From the aforesaid enunciations of law there remains no iota of doubt that the order of compulsory retirement is not to be passed as short cut to avoid departmental enquiry and the order is to be passed after having due regard to the entire service record of the officer. It also follows that an order has to be tested on the touchstone that no reasonable person would form requisite opinion on the given material. To elucidate, the order should not smack of perversity or based on no material or prima facie mala fide. Quite apart from the above the Apex Court has expressed the view that if the officer has been given promotion despite adverse entries made in the

6 (1992) 2 SCC 317

confidential record, that goes in favour of the officer concerned.

11. In the case in hand, the preceding five years ACRs of the petitioner would indicate that in the year 1989 he was graded as 'C' (ग) ; in 1990 the petitioner was graded as 'D' (?k) ; in 1991 grading of the petitioner was 'C' (x); and in 1992 'B' (ख) grade was awarded to the petitioner. Nothing is mentioned for the adverse entries of the year 1993. As against the adverse entry of the year 1990 the petitioner's representation was allowed by the Director General of Police on 14-6-1993 (Annexure-A/3), therefore, the entry 'D' (घ) of the year 1990 lost its relevance for the purposes of exercise of power under Rule 42 of the Rules, 1976.
12. There is no mention in the return that the petitioner was visited with any penalty during his entire service tenure. In absence of any adverse material pointed out in the return, it cannot be said that the petitioner's entire service record was properly looked into by the scrutiny committee. Moreover, two employees who were short listed and recommended for compulsory retirement namely; A.R Khan & B.S Narvale were, in fact, promoted on the post of DSSP/ACS vide order dated 9-5-1995 (Annexure-A/16), therefore, it would clearly appear that the exercise under taken

by the review committee was mechanical and such officers who were, in fact, entitled to be promoted, were included in the list of Inspectors recommended for compulsory retirement. Even otherwise, it is not at all possible for the scrutiny committee to have examine the record of 499 Inspectors and staff of Ministerial cadre in two days.

13. The Division Bench of the Madhya Pradesh High Court in **State of Madhya Pradesh v. Bhushanlal Kaul and others**⁷ has held that when cases of 559 officers were scrutinized and concluded in a single day, it amounts to farce and non application of mind by the scrutiny committee.
14. For the foregoing, I am of the considered opinion that the order of compulsory retirement passed against the petitioner suffers from malice in law, therefore, it is arbitrary and, as such, it deserves to be and hereby quashed.
15. In **Rajnesh Kumar Jamindar** (supra) the Supreme Court while quashing the order of compulsory retirement has allowed back wages to the extent of 50%, therefore, the present petitioner is also held entitled to 50% back wages from the date of compulsory retirement till the age of superannuation and,

7 1999 SCC Online MP 419 : (1999) 8 SLR 263 (DB) : 1999 Lab IC 3516



thereafter, he shall be paid the complete pension by treating him to have retired in due course of his tenure. The entire arrears shall be calculated and paid to the petitioner within a period of three months from today.

16. *Ex-consequenti*, the Writ Petition is allowed, leaving the parties to bear their own costs.

Sd/-
Prashant Kumar Mishra
Judge

Gowri